

Bill of Complaint.

Dopp and the Grand Trunk Railway, being eighty-seven acres, more or less.

II. That on or about the 26th day of June, 1888, the said Charles T. Pinel died leaving a last will and testament, which said last will and testament was duly admitted to probate by the Probate Court for the County of Macomb and State of Michigan, and by which said last will and testament the said Charles T. Pinel left his entire estate consisting of the above mentioned property, as follows: a life estate to the widow, Rachel Pinel, and the remainder to the defendants, to-wit, Thomas F. Pinel, Edgar O. Pinel, now deceased, and Rachel Campsell, each a certain definite proportion, that is to say, to Thomas F. Pinel the southerly twenty acres, and to Edgar O. Pinel and Rachel Campsell, the remainder share and share alike, said Rachel Pinel now being in actual possession of said premises.

III. That as aforesaid the said last will and testament of the said Charles T. Pinel was admitted to Probate and no appeal taken therefrom and all steps properly and duly taken whereby the title to the aforesaid property apparently vested in the said defendants.

IV. That the said Charles T. Pinel failed to provide in his will for your orators and one Charles W. Pinel, one of their brothers, and your orators allege and charge the fact to be that such omission from the said last will and testament was not intentional on the part of the said Charles T. Pinel but was made by a mistake or accident.

V. That the statute laws of the State of Michigan provide that when any testator shall omit to provide in his will for any of his children and it shall appear that such omission was not intentional but was made by mistake or accident, such child shall have the same share in the estate of such testator as if he had died intestate and that by virtue of the said statute your orators and the said Charles W. Pinel are entitled to the same shares respectively in the estate of the said Charles T. Pinel, deceased, as if he had died intestate.

VI. That at the time of his decease, Charles T. Pinel left surviving him a widow, Rachel Pinel and nine children, to-wit, your orators, Charles W. Pinel, defendant, Thomas F. Pinel and Rachel Campsell, Edgar O. Pinel, now deceased and Bessie Pinel, now deceased, James T. Pinel and George W. Pinel.

VII. That the said Charles W. Pinel by a good and sufficient deed dated the 23d day of January, 1914, and for and in consideration of the sum of six hundred dollars to him duly paid by the said complainant

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Sarah Slyfield conveyed unto the said Sarah Slyfield all his right, title and interest and distributive share in the estate of the said Charles T. Pinel, deceased and to the land aforesaid, which deed your orators herewith bring into court and to which your orators for greater certainty beg leave to refer and which deed is made a part and parcel of this Bill of Complaint as if herein incorporated.

IX. That by reason of the premises hereinbefore set forth, and the death of the said Bessie Pinel Complainant Herman Pinel is entitled to an undivided one-eighth interest and Complainant Sarah Slyfield to an undivided two-eighths interest, or in all both complainants together to an undivided three eighths interest in the aforesaid property, which said interests are of the value of forty-five hundred dollars and upwards over and above all encumbrances.

X. That your orators were away from home at the time of the death of their father and were not present in the State of Michigan when the will was admitted to Probate, and in fact were not advised that they had any right in the premises, whatsoever, and your orators allege and charge the fact to be that they did not learn of the fact that the omission to provide for them in the will was made by mistake or accident until about nine months ago; that they at once took steps to ascertain the true facts of the case and to investigate what their legal rights in this matter were and that thereupon they were informed of the provisions of the Statute of the State of Michigan and they at once instructed their attorneys to commence the proper proceedings to enforce their rights. And in this respect your orators aver and charge the fact to be that they were purposely misled by the said Thomas F. Pinel, one of the defendants herein as to the wishes of the father with regard to his last will and testament. And your orators further aver and charge the fact to be that they are informed and verily believe that Charles W. Pinel, who sold all his right, title and interest in said premises and estate to Complainant Slyfield, was not aware of his right in the premises, until advised by Complainant Slyfield shortly after she learned that complainants were entitled to their distributive shares in said estate.

XI. That the defendants deny the right of the complainants to an undivided three-eighths interest in and to the aforesaid real property and refuse to deed unto your orators their respective shares in and to the said property, but on the contrary claim to be the sole and legal owners of the whole of the aforesaid premises. Complainants

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further show that they nor either of them, nor the defendants, or any of them, are now in the actual possession of the aforesaid premises.

XII. That the claims of the defendants to the whole of the aforesaid premises by reason of the probate of the said last will and testament of the said Charles T. Pinel and the proceedings taken thereunder, that is, recording the said last will and testament, and the assigning of the respective shares to the said defendants under the said last will and testament, constitute a cloud upon the title of your orators to an undivided three-eighths interest in and to the aforesaid premises and have the effect to prevent your orators from making sale of the same or any part thereof.

XIII. That the said defendants set up and claim title to the whole of said land against the interest of your orators but have not commenced, and as your orators are informed and verily believe and charge the truth to be, do not intend to commence any action at law against your orators to try the title to the said land and premises.

XIV. To the end therefore, that the defendants may, if they can, show why your orators should not have the relief hereby prayed, and may according to the best of their knowledge and belief, full, true, direct and perfect answer make, but not under oath, which is hereby waived, to the allegations herein contained, and inasmuch as your orators have no adequate remedy at law, they pray:

First—That your orators may be decreed to be the lawful owners of an undivided three-eighths interest in and to the premises herein described in the first paragraph of this bill of complaint, free and clear of any and all claims of the said defendants.

Second—That the said defendants may be decreed to release to your orators all right, title or interest which they claim they have in the said land by color of the said probate of the said last will and testament of the said Charles T. Pinel, to an undivided three-eighths interest to the premises set up and fully described in the first paragraph of this Bill of Complaint.

Third—That the said defendants may be decreed to have no right, title or interest whatsoever in or to an undivided three-eighths interest in the premises described in the first paragraph of this Bill of Complaint, and that your orators may cause said decree to be recorded in the office of the register of deeds for the Macomb County, Michigan, and that when the said decree is duly recorded it may have the same force and effect as if releases to an undivided three-eighths

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interest had been duly made and delivered unto your orators by the said defendants.

Fourth—That your orators may have such further other or different relief in the premises as shall be agreeable to equity and good conscience and to this Honorable Court shall seem meet.

And your orators will ever pray.

Sarah Slyfield

Herman H. Pinel

By Devine & Snyder,

His Solicitors.

Devine & Snyder,

Solicitors and of Counsel for Complainants.

Eastern District of Michigan,

State of Michigan,

County of Wayne, ss.

I, Sarah Slyfield, being duly sworn, depose and say that I am one of the orators and Complainants in this Bill of Complaint; that each and every allegation in the foregoing Bill of Complaint is true, of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. I hereby incorporate the foregoing Bill into this affidavit and refer to the same, with the same effect as if it were herein repeated specifically and at length.

Sarah Slyfield

Subscribed and sworn to this 29th day of January,
A. D. 1914.

H. M. Lampson

Notary Public, Wayne County, Michigan.
My commission expires April 22, 1917.

*Motion to Dismiss Bill of Complaint, Etc.***MOTION TO DISMISS BILL OF COMPLAINT AND
STAY PROCEEDINGS.**

(Filed Feby. 10, 1914.)

To Devine & Snyder, Solicitors for Plaintiffs.

Take Notice: That the attached motion will be brought on for hearing at said District Court Room in the City of Detroit, Michigan, on Monday the 16th day of February, 1914, at nine o'clock in the morning of said day, or as soon thereafter as counsel can be heard.

Lynn M. Johnston,
Solicitor for Defendants Pinel.

To the Clerk of said Court:

Please place the within motion on the Calendar for hearing on Monday the 16th day of February, 1914.

Lynn M. Johnston,
Solicitor for Defendants Pinel
Business Address, Mt. Clemens, Mich.

State of Michigan,
County of Wayne, ss:

Lynn M. Johnston being duly sworn, deposes and says that on 10th day of February, 1914, he served a copy of the attached motion, and attached affidavits, on Devine and Snyder, solicitors for plaintiffs by leaving the same at the office of Devine & Snyder with one in charge of the office and explaining its contents.

Lynn M. Johnston.

Subscribed and sworn to before me this 10th day of Feb., 1914.

Fred H. Devine,
Notary Public for Wayne County, Mich.
My Com. expires Sept. 5, 1915.

Now comes Thomas F. Pinel, individually, and as Special Administrator for the Estate of Edgar O. Pinel, deceased, defendants herein, by their attorney Lynn M. Johnston, and moves the court to dismiss the bill of complaint, filed in said cause, for the following reasons:

I—It does not appear from said bill of complaint that the amount in controversy is sufficient to give this court jurisdiction, it is not alleged to be an amount exceeding three thousand dollars, as required by statute, and is not in fact an amount sufficient to give this court jurisdiction,—because, among other reasons:

(a) Plaintiffs have separate causes of action, and it does not appear from said bill of complaint, that the amount claimed by each exceeds \$3,000.00.

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(b) There are three independent parties made principal defendants, each having separate interests or causes of action, and it does not appear from the pleadings at all what the claim of each, or both of said plaintiffs is against each of said defendants, and does not appear that the amount in controversy as to each defendant is in excess of three thousand dollars, or the necessary jurisdictional amount, and, in fact, cannot be said amount, under the allegations of said bill of complaint, and is not.

II—The parties to said cause are collusively joined, and the alleged transfer of the interest of Charles W. Pinel to Sarah Slyfield, as set forth in the bill of complaint, appears to be a fictitious and collusive transfer, or assignment, for the purpose of giving this court jurisdiction, because among other reasons:

(a) In the bill of complaint in case No. 51 recently filed in this court by said Herman Pinel against these same defendants,—which bill was dismissed by this court,—it was alleged in paragraph 5, that "your orator (Herman Pinel) has acquired by proper deed of conveyance the shares of Sarah Slyfield, Charles W. Pinel and James D. Pinel", (the date of which deed plaintiff's counsel, in open court, stated to be October 21st, 1913, or thereabouts), and in this bill of complaint in the present case, it is alleged in paragraph VII that Charles W. Pinel has conveyed his interest to Sarah Slyfield.

(b) About 25 years have elapsed since the settlement of the estate of Charles T. Pinel, from which plaintiffs claim to derive their right of action, and the dates of the said deeds, and the beginning of said actions.

(c) No facts are set forth in said bill which would excuse or explain said delay.

III—Plaintiffs are barred by laches, having waited about 25 years from the accruing of their alleged cause of action, without an adequate reason therefor.

IV—Charles W. Pinel, James D. Pinel and George T. Pinel, all residents of the state, and sons of Charles T. Pinel, deceased, and the heirs of Betsy Pinel, are not made parties hereto.

V—The lands as described in said bill of complaint, were never owned by Charles T. Pinel.

Defendants Thomas F. Pinel further moves the court that, no further proceeds be taken in said cause, until this court has passed upon this motion—and in case this court requires an answer to said bill of complaint then that the time in which to file said answer be extended 20 days from the decision on this motion.

This motion is based upon the affidavits attached hereto, and also upon the pleadings in this cause.